MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 4

The Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

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SPECIAL NOTICE AND TABLE SECTION

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF OPTOMETRISTS

In the matter of the proposed amendment of 8.36.409 concerning the fee schedule.	)))	NOTICE OF PROPOSED AMENDMENT OF 8.36.409 FEE SCHEDULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

The notice of proposed amendment filed by the Board of Optometrists on January 31, 1985 at page 35, Montana Administrative Register, issue number 2, is being renoticed, as the board found the fee increases were not sufficient.

1. On March 30, 1985, the Board of Optometrists proposes to amend 8.36.409 concerning the fee schedule.

2. The amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.36.409 FEE SCHEDULE

(1)	Original certificate of registration	~~$50.00~~ $125.00
(2)	Annual renewal	~~55.00~~ 125.00
(3)	Penalty for late renewal	~~45.00~~ 125.00
(4)	Application for examination	~~75.00~~ 150.00
(5)	Reciprocity application	~~160.00~~ 250.00
(6)	Copies of documents, ~~includes lists~~	~~7.50~~ 15.00"

Auth: 37-1-134, 37-10-202, MCA Imp: 37-1-134, 37-10-302, 303, 307, MCA

3. The board is proposing the amendment to set fees commensurate with costs of administering the program as required by section 37-1-134, MCA. These are the fees necessary to cover each program area cost. The board has determined in rechecking future proposed budgets and monies to be collected the fees originally proposed would not be sufficient to cover program area costs.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Optometrists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than March 28, 1985.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Optometrists, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than March 28, 1985.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons

directly affected has been determined to be 19 based on the 195 licensees in Montana.

BOARD OF OPTOMETRISTS
ALVERNE S. KAUTZ, O.D.
PRESIDENT

BY: _____
ROBERT WOOD, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 15, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the proposed amendment of 8.97.509 (2)(c) (i),(ii), and (iii) concerning application and financing fees, costs, and other charges	))))	NOTICE OF PROPOSED AMENDMENT OF 8.97.509 (2)(c)(i),(ii), and (iii) APPLICATION AND FINANCING FEES, COSTS AND OTHER CHARGES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On March 30, 1985, the Montana Economic Development Board proposes to amend the above-stated rule.

2. The amendment as proposed will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3503 and 8-3504, Administrative Rules of Montana)

"8.97.509 APPLICATION AND FINANCING FEES, COSTS AND OTHER CHARGES (1) ...

(2)...

(c) At the time revenue bonds are issued by the board under the Stand Alone IDB Program to provide financing for a project, the borrower shall pay to the board a financing fee based on the principal amount of revenue bonds issued on behalf of that borrower calculated as follows:

(i) ~~.4~~ .1 percent of the first $500,000~~,~~ ~~$400,000, with a minimum of $1,200,~~ plus

(ii) ~~.1~~ .5 percent of the next ~~$600,000~~ $500,000, plus

(iii) ~~.05~~ .1 percent of any amount over $1,000,000.

The borrower shall pay additional fees to be established by the board if the board guarantees the Stand Alone bond or provides other forms of credit enhancement.

(3) ..."

Auth: 17-5-1521, MCA Imp: 17-5-1504, 1521, MCA

3. The board is proposing this rule amendment to establish fees that more properly reflect the costs to the board of issuing bonds and that more closely approximate fees charged by other governmental units.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Montana Economic Development Board, 1424 9th Avenue, Helena, Montana, 59620, no later than March 28, 1985.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Montana Economic Development Board, 1424 9th Avenue, Helena, Montana, 59620, no later than March 28, 1985.

6. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

MONTANA ECONOMIC DEVELOPMENT BOARD
D. PATRICK McKITTRICK, CHAIRMAN

BY: _____
ROBERT WOOD, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 15, 1985.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of rule 24.29.3801.	)))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE 24.29.3801.

TO: All Interested Persons.

The notice of proposed division action published in the Montana Administrative Register on December 13, 1984, at page 1795, is amended as follows because the division has received a request for a public hearing from the Yellowstone Valley Claimants' Attorneys' Association, comprised of about forty members.

1. On April 4, 1985, at 10:00 a.m., a public hearing will be held in the conference room on the third floor of the Workers' Compensation Building located at 5 South Last Chance Gulch, Helena, Montana, to consider the proposed amendment of Rule 24.29.3801, Attorney Fee Regulation. The rule proposed for amendment is found on page 24-2353 of the Administrative Rules of Montana.

3. The amendment is proposed for the purpose of setting forth the manner in which attorneys, who represent or act on behalf of a claimant or any other party on any workers' compensation claim, submit to the division a contract of employment between the attorney and the claimant, and setting forth the manner in which the administrator of the division regulates the amount of the attorney's fee in any workers' compensation case. The amendment of this rule is necessary to distinguish the division's responsibility to regulate attorney fees pursuant to section 39-71-613, MCA, and the workers' compensation court's responsibility to award attorney fees pursuant to section 39-71-611, or 39-71-612, MCA.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to William R. Palmer, Assistant Administrator, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana 59601, no later than April 19, 1985.

5. William R. Palmer, Assistant Administrator, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

5. The authority of the division to make the proposed amendment is based on section 39-71-203, MCA, and the rule implements sections 39-71-611, 39-71-612, and 39-71-613, MCA.

GARY L. BLEWETT, Administrator

CERTIFIED TO THE SECRETARY OF STATE: February 15, 1985

MAR Notice No. 24-29-5

4-2/28/85

BEFORE THE STATE DEPARTMENT OF AGRICULTURE

In the matter of the amendment of Rule 4.12.1208 reducing the laboratory analysis fee from $25 to $20 for Alfalfa leafcutting bees	)))))	Notice of Amendment of Rule 4.12.1208 concerning laboratory fees for samples of bees submitted for certification

TO: All interested persons.

1. On December 27, 1984 the Department of Agriculture published a notice of amendment of the above-stated rule at pages 1823, 1984 Montana Administrative Register, issue number 24.

2. The department has amended the rule exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

Keith Kelly, Director
Montana Department of
Agriculture

Certified to the Secretary of State, February 11, 1985.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

EMERGENCY ADOPTION OF NEW RULES I AND II

EMERGENCY AMENDMENT OF RULES
16.32.103, 16.32.106 16.32.107, 16.32.111 and 16.32.112

EMERGENCY REPEAL OF RULE 16.32.108

1. Statement of reasons for emergency: On February 15, 1985, the Governor signed SB-71 which substantially revises the review procedures for applications for certificates of need to establish new health care facilities and services. SB-71 has an immediate effective date. Consequently, the Department's current rules for conducting these reviews are, in many respects, no longer valid. It will take at least two months for new procedural rules to be formally adopted. In the interim, the state is without proper procedural safeguards to protect the due process rights of certificate of need applicants, and to guarantee that appropriate health care decisions are made. The rights of Montana's health care providers as well as the health and welfare of the state's health care consumers, are dependent on fair and efficient review of these applications. Therefore, during this interim period before permanent rules can be adopted, the lack of rules presents an imminent threat to public welfare.

Consequently, the Department adopts these emergency rules for review of certificate of need applications pending adoption of permanent rules. These rules will be in effect until permanent rules are adopted, but in no event longer than 120 days.

Because of the need to process applications without delay as they are received, the Department has determined that, to avoid imminent peril to the public welfare, these emergency rules shall become effective immediately upon filing with the Secretary of State.

2. The repealed rule 16.32.108 may currently be found on pages 16-1404 and 16-1405 of the Administrative Rules of Montana. The new rules and amendments to rules 16.32.103, 16.32.106, 16.32.107, 16.32.111, and 16.32.112 provide as follows:

RULE I APPLICABILITY (1) These emergency rules are applicable to the review of all certificate of need applications which, as of the effective date of these emergency rules:

(a) have not been declared complete; or

(b) have been declared complete but for which no hearing has been held, and for which at least 60 days remain in the review period.

(2) In cases where the Department has rendered its initial decision on an application, and an appeal is requested, but the provisions of these emergency rules have not been applied, the reconsideration hearing provided in ARM 16.32.112 shall be conducted pursuant to the informal contested case provisions of the Montana Administrative Procedure Act, 2-4-604, MCA, and good cause for reconsideration shall include any grounds for which an appeal might be taken to district court.

AUTHORITY: Sec. 2-4-303, 50-5-301, 50-5-302, 50-5-306, MCA
IMPLEMENTING: Sec. 50-5-301, 50-5-302, 50-5-306, MCA

16.32.103 SUBMISSION OF LETTER OF INTENT (1) At least 10 days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall notify the department and the agency qualified as a health systems agency pursuant to 42 USC 300 l of the intent to acquire the facility and of the services to be offered in the facility and its bed capacity. The notice must be in writing and must contain the following:

(a) The services currently provided by the health care facility and the present bed capacity of the facility.

(b) Any additions, deletions or changes in such services which will result from the acquisition.

(c) Any changes in bed capacity, redistribution of beds among service categories or relocation of beds from one site to another which will result from the acquisition.

(2) Except as provided in subsection (1) of this rule, any person proposing an activity subject to review under section 50-5-301, MCA, and not exempt under 50-5-309, MCA, shall submit to the department a letter of intent ~~as a prerequisite to filing an application for a certificate of need,~~ except a health maintenance organization is excluded from submitting a letter of intent or application for a certificate of need for feasibility surveys or planning funded under 42 U.S.C. Sec. 246.

(3) The letter of intent must contain the following information:

(a) Name of applicant

(b) Proposal title

(c) Estimated capital expenditure

(d) Estimated annual operating and amortization expenditure (for new services)

(e) A statement whether the proposal involves:

(i) a substantial change in existing services

(ii) acquisition of equipment (major medical equipment and/or other)

(iii) replacement of existing equipment

(iv) renovation of existing structure

(v) addition to existing structure

(vi) other (explain)

(f) A narrative summary of the proposal, including statements on whether the proposal will affect bed capacity of the facility, or changes in services;

(g) An itemized estimate of proposed capital expenditures including a proposed equipment list with a description of each item which will be purchased to implement the proposal;

(h) Anticipated methods and terms of financing the proposal;

(i) Effects of the proposal on the cost of patient care in the service area affected;

(j) Projected dates for commencement and completion of the proposal; and

(k) The proposed geographic area to be served.

(l) An itemized estimate of increases in annual operating and/or amortization expenses resulting from new health services.

(m) The location of the proposed project.

(n) A brief description of other facilities in the services area which provide similar services.

(4) The letter of intent must be dated and signed by an authorized representative of the applicant.

(5) Within 10 calendar days after the receipt of a letter of intent ~~pursuant to subsection (1) and within 30 calendar days after receipt of a letter of intent pursuant to subsection (2),~~ the department shall notify the applicant in writing whether or not the activity proposed in the letter is subject to review under section 50-5-301, MCA.

(a) For letters of intent submitted under subsection (1) of this rule, this decision will be based on a determination whether acquisition of the facility will result in changes in the services or bed capacity of the facility, as described in subsections (1)(a), (b), and (c) of this rule. Acquisition of a health care facility from a health maintenance organization will be considered a change in service.

(b) For letters of intent submitted under subsection (2) of this rule, in determining whether or not a capital expenditure for equipment is over $500,000, the department will review the list submitted by the applicant pursuant to subsection (3)(g) of this rule and will aggregate the total cost for each item of equipment obligated for or purchased within a health care facility's fiscal year for a program, service or plan.

(6) An applicant whose proposal is determined to be subject to certificate of need review under subsection (5)(a) of this rule must submit a full letter of intent as described in subsection (2) of this rule within 30 days of that determination in order to be entitled to review with the current batch, if batching is required.

(7) Persons who acquire health care facilities but who do not file the notice of intent required by subsection (1) of

this rule will be presumed to be subject to certificate of need review for the purposes of this sub-chapter.

(8) If an existing health care facility proposes to establish a home health agency, kidney treatment center, long-term care facility, or hospice, such proposal will be reviewed pursuant to 50-5-301(1)(f), MCA.

(9) Any affected person may request an informal hearing before the department to challenge the department's determination regarding applicability of certificate of need review. Such a request must be received by the department within 10 days following the determination. At least 7 days prior notice of the hearing shall be sent to the persons identified in ARM 16.32.112(1)(d). At the hearing, the affected parties or their counsel will be given the opportunity to present written or oral evidence or arguments challenging or supporting the department's determination. Within 7 days following the hearing, the department will issue its decision, in writing, and the reasons therefor, which shall be sent to the persons who received notice of the hearing. If the department determines that the applicant is subject to review, the letter of intent may be assigned to the next appropriate batching period.

AUTHORITY: Sec. 50-5-103, 50-5-302 MCA
IMPLEMENTING: Sec. 50-5-301, 50-5-302 MCA

16.32.106 BATCHING PERIODS, SUBMISSION OF APPLICATIONS

(1) The following batching periods are established for all categories of service and for all regions of the state:

(a) January 1 through January 20
(b) March 1 through March 20
(c) May 1 through May 20
(d) July 1 through July 20
(e) September 1 through September 20
(f) November 1 through November 20

Except as provided in subsections (3) and (5) below and in section 16.32.103(4), letters of intent will be accepted only during these periods. Letters of intent received at other times will be assigned to the next batching period.

(2) The following challenge periods are established:

For the batching period ending:	The challenge period is:
January 20	February 1 through February 28
March 20	April 1 through April 30
May 20	June 1 through June 30
July 20	August 1 through August 31
September 20	October 1 through October 31
November 20	December 1 through Dec. 31

(3) ~~The following categories of health services will be batched: general medical-surgical, psychiatric, obstetric, pediatric, skilled nursing, personal and intermediate care, other.~~ Only proposals ~~in these categories~~ involving new services, new or increased bed capacity, or construction or replacement of health care facilities will be batched.

(4) Except as provided in subsection ~~(13)~~ (10) below, upon determination by the department that an activity described in a letter of intent is subject to certificate of need review, the letter of intent will be placed in the appropriate batch, according to its category and region of the state. On the first day of the month following the conclusion of each batching period, the department will publish notices in a newspaper of general circulation in the affected areas listing the letters of intent which have been received in the batch just concluded.

(5) Persons who have not filed a letter of intent in the batch just concluded, but who wish to apply for comparative review with one or more of the applicants in that batch, must file a letter of intent during the appropriate challenge period. To qualify for comparative review, such a letter of intent must be received by the department during the challenge period and must identify the applicant(s) in the batch just concluded with which a comparative review is requested, and briefly explain why comparative review is appropriate. Letters of intent which so qualify will be included in the batch just concluded.

(6) At the conclusion of each challenge period, the department will determine which proposed projects within the batch will require comparative review, and will notify all applicants in the batch in writing of comparative review assignments. The notice of assignments will include a brief statement of reasons why comparative review was deemed necessary.

~~(7) Concurrently with the notices of comparative review, the department will send application forms to all applicants in the batch, and will notify all applicants of the time period, which may not be less than 30 nor more than 90 days, within which an application must be received by the department. Failure to return the application within the time specified will require the process to begin anew with another letter of intent.~~

~~(8)~~ (7)(a) No application will be accepted except after submission of a letter of intent. ~~and the issuance of the comparative review notices and application forms pursuant to subsection (7) of this rule.~~ If a challenging letter of intent has been submitted during the challenge period and is accepted for comparative review, the challenger will have an additional thirty days following the conclusion of the challenge period in which to submit an application.

~~(9)~~ (b) The application must contain, at a minimum, the information as specified by the department pursuant to ARM 16.32.136 and 16.32.137.

~~(10)~~ (c) The original and one copy of the application must be submitted to the department.

~~(11)~~ (8) Within 15 calendar days from the date that the department receives the application, the department shall determine whether or not the application is complete.

(a) If the application is determined to be incomplete, the department shall, within 5 working days after that determination, notify the applicant in writing by mail of the incompleteness and of the specific information that is necessary to complete the application. The department shall also indicate a time, which may be no less than 15 days, within which the department must receive the additional information requested. Within 15 days after receipt of the additional information, the department shall determine whether the application is complete. If the information submitted is still not sufficient, the department may require additional information.

(b) If adequate information is not received within the time specified, the department may determine that the applicant has forfeited its right to comparative review for the current batching period. In such a case, the department may either process the application without comparative review according to ARM 16.32.107 or assign the application to the next appropriate batching period.

(c) An application may be changed any time prior to the department's declaration that the application is complete. Change in intent of the application or impact on the financial feasibility of the proposed project after the department's declaration ~~requires~~ may require the process to begin again with the filing of another letter of intent.

~~(12)~~ (9) Only those applications which are received and declared complete within the time periods specified in this rule are entitled to participate in comparative review procedures with other applications within the current batch. However, the department may, in its discretion, conduct a comparative review of competing applications from different batches if such applications are being reviewed concurrently and if such comparative review can be conducted consistently with all other time constraints imposed by Title 50, Chapter 5, Part 3, MCA, and this sub-chapter.

~~(13)~~ (10) Applications which qualify for abbreviated review under ARM 16.32.114, except for those described in ARM 16.32.114(2)(f), need not be placed in a batch and may be processed immediately in accordance with ARM 16.32.114 without batching or comparative review.

AUTHORITY: Sec. 50-5-103, 50-5-302, 2-4-201 MCA
IMPLEMENTING: Sec. 50-5-302, MCA

16.32.107 ACCEPTANCE OF APPLICATIONS; REVIEW PROCEDURES

(1) When an application ~~that has not been assigned for comparative review~~ is determined to be complete, the department shall issue a notice of acceptance in accordance with subsection ~~(4)~~ (3) below.

~~(2) When all applications within a batch that have been assigned to a particular comparative review are determined to be complete, the department shall issue notices of acceptance~~

~~concurrently to all such applicants in accordance with subsection (4) below.~~

~~(3) The department shall approve, approve with conditions, or deny the application, unless the applicant agrees in writing to a longer period, within 90 calendar days after a notice of acceptance of the completed application has been published in a newspaper of general circulation within the service area affected by the application. In the case of a review of a new institutional health service proposed by a health maintenance organization, the review cycle shall begin on the date the application is deemed complete by the department and shall not extend beyond 90 calendar days.~~

(2) Within thirty days after a notice of acceptance of a complete application has been issued, the health planning and medical facilities division shall issue a preliminary decision on the application, accompanied by a staff report and findings in support of the decision. Notice of the preliminary decision shall be published as provided in subsection (3).

~~(4)~~ (3) A notice of acceptance of a complete application must be mailed to the applicant, an agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 300l Health Service Act, health care facilities and health maintenance organizations located in the service area and rate review agencies in the state. Contiguous health systems agencies qualified pursuant to 42 U.S.C. Sec. 300l will be notified if the service area borders one of the surrounding states. A ~~The~~ notice of ~~acceptance~~ preliminary decision must be circulated as provided for notices of acceptance, and published in a newspaper of general circulation in the service area affected.

~~(5)~~ (4) A notice of preliminary decision ~~acceptance of an application~~ must include:

(a) the review period schedule;

(b) the date by which a written request for a public ~~an informational~~ hearing must be received by the department;

(c) the manner in which notification will be provided of the time and place of a public ~~an informational~~ hearing so requested; and

(d) the manner in which the public ~~informational~~ hearing will be conducted.

~~(6)(a) An agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 300l must be given the opportunity to provide the department with recommendations on the application within 60 calendar days after the notice of acceptance of the completed application has been published as required by ARM 16.32.107(4) unless another period of time has been agreed to, in writing, by the health systems agency and the department. Health systems agency reviews of an application by a health maintenance organization may not extend beyond 60 days.~~

~~(b) If the recommendations are not received within the prescribed period of time, the department is not required to consider the recommendations.~~
AUTHORITY: Sec. 50-5-103, 50-5-302, MCA
IMPLEMENTING: Sec. 50-5-302 MCA

16.32.108 INFORMATIONAL HEARING IS REPEALED
AUTHORITY: Sec. 50-5-103, 50-5-302, MCA
IMPLEMENTING: Sec. 50-5-302 MCA

RULE II HEARING PROCEDURES (to be codified as 16.32.109)
(1) If the preliminary decision issued pursuant to ARM 16.32.107(2) is for denial of the application, or in the case of comparative review of competing applications, a public hearing must be held no later than 60 days following the issuance of the preliminary decision. Public notice of the hearing must be published with the preliminary decision as provided in ARM 16.32.107(3) and (4).
(2)(a) If the preliminary decision is for approval of the application and no comparative review is required, the notice of preliminary decision shall include a statement that any affected person may request a public hearing on the application. Such a request must be received by the department in writing within 15 days after publication of the notice.
(b) The department shall hold a hearing if there is substantial public interest or significant opposition to the application by affected persons, as reflected in requests for a hearing.
(c) If the department determines that a hearing is warranted, it must be held within forty-five days after receipt of the request.
(3) All parties, including the department, who wish to participate formally in the hearing shall submit a pre-hearing memorandum to the department no later than fifteen days prior to the hearing, which shall set out with as much specificity as possible the party's statement of issues, contested facts, points of law, anticipated witnesses and the nature of their testimony, and copies of anticipated exhibits.
(4) The hearing will be before the department and will be conducted pursuant to the informal rules of procedure, 2-4-605, MCA. Informal public testimony may be permitted at the discretion of the hearings officer.
(5) The record of decision will close at the conclusion of the hearing. Parties will be entitled to submit proposed findings of fact, conclusions of law and a proposed order.
AUTHORITY: Sec. 50-5-103, MCA
IMPLEMENTING: Sec. 50-5-302, MCA

16.32.111 DEPARTMENT DECISION (1)(a) If no request for a hearing is received within the 15-day comment period provided in ARM 16.32.109(2), the department must issue its

final decision within 15 days after the end of that comment period.

(b) If a hearing is held pursuant to ARM 16.32.109, the final decision of the department must be issued within 30 days after the conclusion of the hearing.

(c) These deadlines may be extended with the concurrence of the affected applicants.

~~(1)~~ (2) If the department fails to reach a decision within the required deadlines ~~the 90 calendar days,~~ or the longer period of time agreed upon by the applicant, or to issue a decision within 5 working days thereafter, a certificate of need will not automatically issue.

~~(2)~~ (3) If the certificate of need is issued with conditions, the conditions must be directly related to the project under review, and to the criteria listed in Section 50-5-304, MCA, and ARM 16.32.110, and cannot increase the scope of the project.

~~(3)~~ (4) The decision of the department must be based on the record and contained in written findings of fact and conclusions of law, and must be mailed to the applicant, all other applicants assigned for comparative review with the applicant, and any agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 3001 and must be made available, upon request, to others for cost. Whenever the department's decision involves new health services proposed by a health maintenance organization, or the department's decision to deny a certificate of need is based on its findings with respect to provision of health services to minorities and medically underserved populations, the department shall send copies of the department's written findings and decision to Region VIII office of the Department of Health and Human Services at the time the applicant is notified of the department's decision.

~~(4)~~ (5) If the department's decision is not consistent with the Montana Health Systems Plan, the Montana Annual Implementation Plan, or the Montana State Health Plan, or does not concur with the recommendations of an agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 3001 the department shall submit a written detailed statement of the reasons for the inconsistency to the agency qualifying as a health systems agency pursuant to 42 U.S.C. Sec. 3001.

AUTHORITY: Sec. 50-5-103 MCA
IMPLEMENTING: Sec. 50-5-302, 50-5-304 MCA

16.32.112 APPEAL PROCEDURES (1) Any ~~affected person~~ party to the public hearing held pursuant to ARM 16.32.109 may request a reconsideration hearing before the department for "good cause".

(a) For the purpose of ~~this~~ rule "good cause" exists as provided in [RULE I], or if the requestor:

(i) presents significant relevant information not previously considered by the department;

(ii) demonstrates that there have been significant changes in factors or circumstances relied upon by the department in reaching its decision; or

(iii) demonstrates the department has failed to follow procedural requirements in reaching its decision.

(b) The request must be received in writing within 20 calendar days after the department's initial decision has been issued and state facts constituting the alleged "good cause".

(c) The department has 7 calendar days from receipt of the request in which to determine if "good cause" has been demonstrated, and shall notify the requestor, in writing, of its decision. If the department determines "good cause" exists, an informal hearing shall be held within 20 calendar days after receipt of the request.

(d) Notice of the reconsideration hearing shall be sent to the person requesting the hearing, the applicant, any agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 300l and any other affected person upon request.

(e) Except as provided in [RULE I], ~~At~~ at the reconsideration hearing, the affected parties or their counsel will be given the opportunity to present written or oral evidence in opposition to the department's action; written or oral statements challenging the grounds upon which the department's action was based; and other written or oral evidence relating to the factors on which "good cause" for the hearing was based.

(f) The department shall make written findings of fact and conclusions of law which state the basis for its decision within 30 calendar days after the conclusion of the reconsideration hearing. These findings of fact and conclusions of law shall be sent to the person requesting the hearing, the applicant, and the agency qualified as the health systems agency pursuant to 42 U.S.C. Sec. 300l. Any other affected person upon request may receive a copy of these findings for cost.

(g) The decision of the department following the reconsideration hearing shall be considered the department's final decision for the purpose of appealing the decision.

(2) ~~An affected person~~ A party may appeal the department's initial decision directly to district court ~~the board~~ without first requesting a reconsideration hearing, if the issues on appeal do not satisfy the criteria set forth in subsection (1)(a).

~~(3) A decision of the board on appeal shall be made in writing within 45 calendar days after the conclusion of the board hearing, and shall be sent to the applicant, the department and the agency qualified as the health systems agency pursuant to 42 U.S.C. Sec. 300l. Any other affected person upon request may receive a copy of this decision for~~

~~cost. The board, in accordance with the reasons found in section 2-4-704, MCA, may affirm the department's decision, remand the application to the department for further proceedings, reverse the department's decision or modify the department's decision. The decision of the board shall be considered final.~~

AUTHORITY: Sec. 50-5-103, 50-5-306, MCA
IMPLEMENTING: Sec. 50-5-306, MCA

3. The new rules and amendments are effective February 15, 1985.

John J. Drynan, M.D., Director

Certified to the Secretary of State February 15, 1985

VOLUME NO. 41 OPINION NO. 5

COUNTY COMMISSIONERS - Authority to consolidate high school districts;
SCHOOLS AND SCHOOL DISTRICTS - Procedure for consolidation of high school districts;
MONTANA CODE ANNOTATED - Sections 7-5-2103, 20-6-310, 20-6-315.

HELD: The board of county commissioners does not have authority to consolidate high school districts in a county. The procedure for such consolidation is set forth in section 20-6-315, MCA.

6 February 1985

Gerry M. Higgins
Golden Valley County Attorney
Golden Valley County Courthouse
Ryegate MT 59074

Dear Mr. Higgins:

You requested an opinion concerning the authority of the board of county commissioners under section 7-5-2103, MCA, to consolidate high school districts of a county after the repeal of section 20-6-310, MCA.

Section 7-5-2103, MCA, provides:

> The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to divide the counties into township, school, road, and other districts required by law; change the same; and create others as convenience requires by consolidation of two or more townships or otherwise.

This statute, enacted in 1931, is located in the chapter describing the general operation and conduct of county government.

Section 20-6-310, MCA, was repealed by the 1983 Legislature. It stated:

> The board of county commissioners of any county shall have the authority to consolidate any two or more high school districts of the county whenever it appears to them that it would be for the best interest of the pupils and other residents of the districts and the county. The board of county commissioners shall have complete responsibility and authority to determine all questions involved in effecting the consolidation of the high school districts, except that before it shall become effective any such boundary change shall be approved by the superintendent of public instruction.

This statute was located in the chapter governing school districts. In the same bill that repealed the above statute, House Bill 428, the Legislature enacted a new statute, section 20-6-315, MCA, which sets forth in detail the procedure to be followed when two or more high school districts in a county consolidate. It is my opinion that this section contains the exclusive method for consolidation of high school districts in one county. The mandatory language in section 20-6-315, MCA, demonstrates a clear legislative intent that consolidation of high school districts in one county be accomplished only under the procedures set forth therein:

> Any two or more high school districts in one county may consolidate to organize a high school district. The consolidation must be conducted under the following procedure.... [Emphasis added.]

This section does not permit consolidation of high school districts by the board of county commissioners.

The language of section 20-6-315, MCA, is clear and unambiguous, and needs no further interpretation. Crist v. Segna, 38 St. Rptr. 150, 152, 622 P.2d 1028, 1029 (1981). Moreover, although section 7-5-2103, MCA, appears to give the board of county commissioners general authority to divide and change school districts, section 20-6-315, MCA, is more recent and more specific,

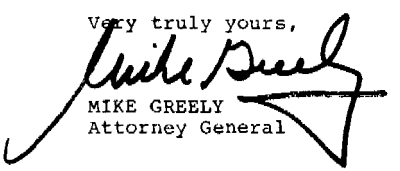
and therefore controls. Dolan v. School District No. 10, 195 Mont. 340, 347, 636 P.2d 825, 828 (1981); Huber v. Groff, 171 Mont. 442, 461, 558 P.2d 1124, 1134 (1976).

The legislative intent with regard to House Bill 428 was clearly to abrogate the authority of the board of county commissioners to consolidate high school districts and place it in the hands of the electors of the high school districts.

THEREFORE, IT IS MY OPINION:

> The board of county commissioners does not have authority to consolidate high school districts in a county. The procedure for such consolidation is set forth in section 20-6-315, MCA.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 6

COUNTIES - Budgeting;
COUNTIES - Setting county commissioners' salaries;
COUNTY OFFICERS AND EMPLOYEES - Setting county commissioners' salaries;
COUNTY OFFICERS AND EMPLOYEES - Time for setting county commissioners' salaries;
COUNTY OFFICIALS - Setting officials' salaries;
COUNTY OFFICIALS - Time for setting county commissioners' salaries;
ELECTED OFFICIALS - Setting county commissioners' salaries;
ELECTED OFFICIALS - Time for setting county commissioners' salaries;
SALARIES - Setting county commissioners' salaries;
MONTANA CODE ANNOTATED - Sections 7-1-2111, 7-4-2107, 7-4-2503, 7-4-2503(1);
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 81 (1984).

HELD: When a county's classification changes according to section 7-1-2111, MCA, the salaries of the county commissioners, as provided in section 7-4-2107, MCA, must change as of July 1 of the following year, the onset of a new fiscal year for the county.

7 February 1985

John P. Connor, Jr.
Jefferson County Attorney
P.O. Box H
Boulder MT 59632

Dear Mr. Connor:

You have requested my opinion as to when a change in county classification according to section 7-1-2111, MCA, results in a salary change for county commissioners, according to section 7-4-2107, MCA. I conclude that the rationale of 40 Op. Att'y Gen. No. 81 (1984) requires that a change in salary should not occur until the beginning of the following fiscal year.

Section 7-4-2107, MCA, provides:

> Compensation of county commissioners. (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus $2,000.
>
> (2) Each member or the board in all other counties is entitled to a salary of not more than $50 for each day in which he is actually and necessarily engaged in the performance of board duties as set by resolution of the board.
>
> (3) This section does not apply to counties that have adopted a charter form of government.

Because this section refers to county classes, as set by section 7-1-2111, MCA, and because it refers to section 7-4-2503, MCA, the logic of 40 Op. Att'y Gen. No. 81 (1984) is persuasive. That opinion addressed the issue of whether and when there should be a change in salaries for the officials listed in section 7-4-2503(1), MCA. It was to address only the salaries of the officials listed in section 7-4-2503(1), MCA, but the issue you raised can be resolved by reference to the previous opinion, as the statute setting the salaries of the county commissioners requires computation according to section 7-4-2503, MCA.

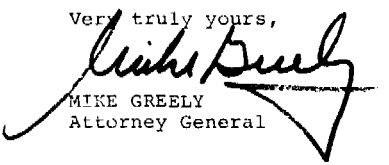
Application of the previous opinion leads to the same result for changing the salaries. They must not change until July 1 of the following year, the onset of the new fiscal year.

THEREFORE, IT IS MY OPINION:

> When a county's classification changes according to section 7-1-2111, MCA, the salaries of the county commissioners, according to section 7-4-2107, MCA,

must change as of July 1 of the following year, the onset of a new fiscal year for the county.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 7

COUNTY ATTORNEYS - Duties of county attorney in URESA actions;
JUDGMENTS - Satisfaction and sale of property upon which a lien exists;
CHILD CUSTODY AND SUPPORT - Function of county attorney with regard to judgments and satisfactions;
MONTANA CODE ANNOTATED - Sections 25-9-301, 25-9-311, 37-61-401, 40-4-208, 40-5-101 to 40-5-142, 40-5-103(15), 40-5-113, 40-5-119, 40-5-125.

HELD: A county attorney may not enter into an agreement compromising or satisfying a support order, or an agreement to allow the sale of property on which a support order is a lien.

11 February 1985

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

You requested an opinion concerning whether a county attorney representing obligees under URESA may agree to compromise a support order, or to allow the sale of property on which a support order acts as a lien.

The Montana Revised Uniform Reciprocal Enforcement of Support Act (URESA), §§ 40-5-101 to 142, MCA, delegates the responsibility of representing URESA obligees to the county attorney, whether acting for the initiating or the responding jurisdiction. §§ 40-5-113, 40-5-119, MCA. The result of a URESA action may be a "support order" which is a judgment, decree, or order of support in favor of an obligee. § 40-5-103(15), MCA. When the court issues a support order against an obligor, a lien is created on all nonexempt real property of the obligor in that county until the judgment is satisfied or for six years. §§ 25-9-301, 40-5-125, MCA.

The question arises when a county attorney is asked by the obligor or his agent to enter into an agreement to compromise or satisfy a support order or allow the sale of property on which a support order is a lien. The county attorney may not enter into an agreement to compromise a support order, as a support order may only be modified by a court, according to section 40-4-208, MCA. Furthermore, section 40-4-208(1), MCA, specifies that a modification of a court's decree as to child support or maintenance may not affect accrued and unpaid amounts, only those amounts accruing subsequent to the motion for modification. The Montana Supreme Court has repeatedly held void attempts to retroactively reduce or eliminate support or maintenance payments. Williams v. Budke, 186 Mont. 71, 606 P.2d 515 (1980); Dahl v. Dahl, 176 Mont. 307, 577 P.2d 1230 (1978); Porter v. Porter, 155 Mont. 451, 473 P.2d 538 (1970); Kelly v. Kelly, 117 Mont. 239, 157 P.2d 780 (1945).

Payment of support orders is discussed in section 40-5-125, MCA, and satisfaction of a judgment is provided for in section 25-9-311, MCA. Recognition of satisfaction of a judgment is a court duty, and although a county attorney can receive money according to section 37-61-401, MCA, he does not have the authority, as does the court, to declare a support order satisfied.

THEREFORE, IT IS MY OPINION:

> A county attorney may not enter into an agreement compromising or satisfying a support order, or an agreement to allow the sale of property on which a support order is a lien.

Very truly yours,

MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1984. This table includes those rules adopted during the period January 1, 1985 through March 31, 1985, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1984, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1984 and 1985 Montana Administrative Registers.

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